

No. 12678

Supreme Court of Illinois

Wolf

vs.

Stone

71641  7

156 = 50

Ornament

Edmund St

156

~~Stone~~

1858

2678

~~Paper~~

Be it Remembered that heretofore to wit on the twenty ninth day of April in the year of our Lord one thousand eight hundred and fifty seven there was filed in the office of the Clerk of the Circuit Court in and for the County of Peoria in the State of Illinois a petition for mechanics lien which with the precept for summons thereto attached is in the words and figures following to wit:

Petition

To the Honorable Elisha N. Powell Judge of the sixteenth Judicial Circuit for Peoria County & State of Illinois.

The petition of Edward Stone of said County of Peoria aforesaid respectfully represents unto your Honor that Thornton Wolf (whom your petition says may be made a party defendant hereto) was on the seventeenth day of September A.D. 1856 the owner of the following described real estate to wit: Lots five & six in block eighty two in Morton Norris & Lavell's addition to the town (now city) of Peoria; that said petitioner built a dwelling house two kitchens a back-house a smoke house a cistern & a large amount of board fence on said lots for said Wolf at his special instance & request, which said buildings cistern & fence your petitioner began to build about the said 17th day of September A.D. 1856 by virtue of a written article of agreement under seal, made executed & entered into bearing date the day and year last aforesaid, and substantially set forth as follows:

Article of agreement between Edward Stone of the one part and Thornton Wolf of the other part as follows. - Said Stone agrees to build for said Wolf the following buildings to wit: one dwelling house or main building to be two stories high and sixteen feet wide by thirty two feet long to be sixteen feet eight inches between the upper and lower joists, one main Kitchen one story high the story to be the same height as the main building to be ten by twelve feet with six feet porch extending the whole length on the north east side. One summer Kitchen one story high to be ten by twelve feet. One smoke house to be eight feet square & proportioned in length. The main building to be divided by a good substantial partition

anything across the narrow way of the building in the center leaving two rooms, one for a parlor or front room & the other for a dining room each to be sixteen feet square. In the main building there is to be 5 windows in the lower story, two french windows in front and three common windows on the north east side. In the second story there is to be seven windows all to be made in appropriate style & places and to be in good proportion to the main building. In the main kitchen there is to be one window. In the summer kitchen there is to be two windows, all the windows in front only to be furnished with blinds & springs.

Doors. There is to be one front door made in good proportion and finished with a good lock & trimmings, the lock to be a patent lock. In the main kitchen there is to be three doors, one leading into the dining room, one out into the porch and one into the summer kitchen. There is to be one door leading through from the front room to the dining room.

Under the whole of the dining room there is to be a cellar six feet & four inches high walled with brick. Under the summer kitchen there is to be a cistern that will hold fifty barrels of water properly finished.

The foundations of all the buildings shall be made of brick and built substantially to be eight inches thick and to run up two feet above the surface of the ground. — There is to be a chimney running up between the parlor and dining room, the same to have a fire place in the dining room & also a fire place in the second story above the dining room. In the parlor there shall be a flue into the chimney & also a flue into the chimney in the second story over the parlor. There is to be a good well finished box stairway leading from the dining room up into the second story. There is to be a good well finished mantel piece over and around the fire place in the dining room. The space between the chimney or fire place and corner of the dining room on the opposite side from the door shall be finished with a cap board and shelving in good style so that the same will be even out with the chimney. The first story of all the buildings shall be filled up in the wall with brick from the foundation up to the window sills. — The joists are all to be 2 inches thick & eight inches wide except the upper joist to be 2 by six inches. — There is to be a chimney for a flue between the two kitchens. — All the materials to be furnished by said Stone and to be of good quality. — Said buildings are to be painted with two coats of white lead both inside and outside all the work to be finished in good workmanlike style.

Said buildings to be erected on lot 5 & 6 Block 86 in Meadon, Conn

and Special addition to the town (now city) of Peoria of Peoria.

Said Stone also agrees to build a good fence around said buildings as follows 176 feet of tile board fence on the south side, 114 feet of fine board fence on the line of the alley in said block along on the line of Evans street 176 feet of fine board fence and 114 feet of fine board fence on the line of Madison street. The work to be done and the buildings finished, with two coats of plastering (except the summer kitchen which need not be plastered) by the first day of November 1856. The fencing above mentioned on the south side will extend from the back building to the alley. The buildings to be set on the line of the lot which will shorten the line of the fence on that side. There is to be a back-house also built by said Stone on said ground.

Said Wolf agrees to pay for said Work as follows One horse & one cow & calf to be counted two hundred dollars to be delivered when the foundations of said buildings is finished. Four hundred dollars when said buildings are all inclosed, and four hundred dollars when all the work is completed.

Said Stone further agrees to make a stair door for the stairway running up from the dining room all the doors are to be finished in good style with good & sufficient locks & latches "

After the making of the above set forth agreement to wit; on the 11th day of September A.D. 1856, said parties further agreed that the time for the building the fence & smoke house should be extended until the 15 day of November A.D. 1856 & a memorandum thereof in writing was made and signed by said Wolf; said memorandum is substantially set forth as follows.

" Said Wolf, hereby agrees to extend the time for building the fence & smoke house until the 15th day of November 1856 "

And afterwards again to wit on or about the 12th day of November A.D. 1856 said petitioner & said Wolf made a further agreement in writing & executed by them both which last additional agreement is substantially set out as follows

" And it is understood and agreed that said Edwin Stone is to put on said house a good and suitable cornice on said house on all sides & ends of it, and also to put on good and sufficient tin guttering on said house to do as to lead the water to cistern. And to make a door for passage into cellar out of kitchen and also steps into the cellar out of kitchen; said cornice to be of the same kind as is on the house which the said Wolf sold to Mr. McGinity and

the same one he is at this time living in. In case the said Stone makes more wall in brick work than this contract calls for that is all over two feet above the surface from the ground, the said Wolf agrees to pay for the same according to the prices agreed upon in proportion."

Your petitioner further represents unto your Honor that all the above mentioned and described buildings & erections work & labor which he your petitioner agreed & covenanted to build, make do & perform in said agreement mentioned he had to wit on or about the first day of December A D 1856 already completed & finished, that your petitioner had done more & other work than that mentioned in the said agreement & had made various alterations from the original plan of said buildings, which cost your petitioner more work and labor & labor of more skill & value than that required in said agreement & that said petitioner furnished more materials & of a better quality than required by said agreement, all at the instance & request of the said Wolf and for which said alterations extra work and labor & materials he the said Wolf from time to time from the 15th day of September 1856 up to this time promised to pay to said petitioner as much as they were reasonably worth in addition to the chattels & monies he Wolf had agreed & covenanted to pay in said agreement. Your petitioner avers that said extra & additional work & labor & materials furnished were reasonably worth five hundred dollars.

Your petitioner further informs your honor that on or about the first day of December 1856 & before said buildings were completed & finished, said Wolf took possession of the same and has kept possession of the same ever since. That said Wolf undertook then and there to finish and complete the same himself & released your petitioner from any & all agreements & covenants by him made in said agreement above mentioned. That said Wolf ^{has} paid to your petitioner said horse & cow & calf in said article of agreement set forth & four hundred dollars in money, there is now due & payable to your petitioner from said Wolf the sum of nine hundred dollars for said services and materials furnished said Wolf hereinbefore referred to.

Your petitioner further informs your honor that the period of six months has not yet elapsed since the last payment as per agreement from said Wolf to your petitioner herein became due and payable, and that the period in which said buildings & other erections in said agreement mentioned was covenanted & agreed to be

finished did not embrace the period of three years from the time of making said contract.

Your petitioner therefore prays for the benefit of a lien on said buildings and premises as by statute in such cases given, that upon the hearing of this cause said Wolf be decreed to pay to said petitioner said sum of money above stated to be due & owing to said petitioner within a reasonable time to be fixed by your Honor & that in case of neglect or failure so to do, said premises may be sold to satisfy said lien & demand, and that said Wolf produce said article of agreement & the ~~con~~ said additions thereto (the said Wolf has the only copy thereof) and for such other & further relief as to your Honor seems meet & proper & Your petitioner as bound will ever pray &c

Davidson & Peinse, Atty for plff.

(Receipt)

Clerk of Circuit Court will please issue summons on the above returnable to the May Term A D. 1857.

To E. P. Sloan clerk

Davidson & Peinse

And thereupon on the thirtieth day of April A D 1857, the clerk of the said Court issued out of said Court under the seal thereof a summons, directed to the Sheriff of Peoria County to serve and which is in the words and figures following to wit:

Summons

The People of the State of Illinois, to the Sheriff of Peoria County Greeting:
We command you to summon Thornton Wolf, if he may be found in your County, to appear before our Circuit Court on the first day of the term thereof, to be held at Peoria, within and for the said County of Peoria on the second Monday of May next, then and there, in our said Court, to answer the matters and things contained in a certain bill of complaint lately exhibited before our Circuit Court on the chancery side thereof, against the said Wolf by Edward Stone for mechanics lien, and make return of this writ, with an endorsement of the time and manner of serving the same on or before the first day of the term of the said Court to be held as aforesaid. Witnesses Enoch P. Sloan clerk of our said Court and the seal thereof at Peoria this 30th day of April in the year of our Lord one thousand eight hundred and fifty seven

Enoch P. Sloan clerk

Which Summons was afterwards returned by the said Sheriff Endorsed as follows to wit:

Return

Served on the within named Thornton Wolf by giving him a copy of the same April 30, 1857
E. W. Smith, Shff.

And afterwards to wit on the 11th day of May A D 1857 there was filed in the clerks office of said Court the answer of the defendant in the said cause which is in the words and figures following to wit:

Answer

State of Illinois }
Peoria County }²⁰ Peoria County Circuit Court
Edward Stone }
May term 1857

vs }
Thornton Wolf. } Petition for mechanics lien

The answer of Thornton Wolf the defendant in this cause to the petition filed herein shows, that it is true the petitioner and defendant made and executed the contract referred to in said petition at the time and for the purpose therein stated. That defendant was at the time mentioned in petition the owner of the lots therein described and on which said house was agreed to be erected. Defendant does not undertake to say that the contract set out in said petition is the one he made with said Stone, but he believes petitioner has undertaken to set out therein the real contract between them the original of which will be produced on the hearing of this cause. Respondent further admits that on the 17th day of September 1856 or about that time he agreed with said Stone to extend the time for the building of the fence & smoke house mentioned in said contract until the 15th day of November 1856, as stated in said petition.

It is untold that said petitioner & Respondent did on or about the 1st day of November 1856 make the additional agreement mentioned in said petition relative to the cornice & guttering on said house &c but states the fact to be that there never was any additional agreement made on that subject, but states that the said supposed additional agreement was made as a part and parcel of the original agreement therein mentioned. Respondent denies that the petitioner completed or nearly completed said work according to said contract on or about the 1st day of December 1856 or at any other time and he denies all extra work and alterations from the original agreement other than what is hereinbefore mentioned and further denies that said petitioner furnished other materials and of a better quality than mentioned in said agreement.

He denies that the supposed extra work in said petition mentioned was worth five hundred dollars or any other sum.

Respondent further answering says that it is true that he took possession of said building and premises so agreed to be erected by petitioner, but not at the time mentioned in said petition, but some time after the time therein stated.

Respondent further answering says that he has paid petitioner on said work and labor the sum of ^{ninety} hundred and ninety nine dollars and five cents and has always been ready and willing to pay petitioner whatever balance might be found his due on a just settlement of accounts relative to ^{said} ~~the~~ matter if any thing is his due.

Respondent says and avers as matter of defence herein that said petitioner never has in any manner completed the said work and labor according to the said contract but so to do wholly failed and refused and still doth refuse, but on the contrary did abandon and refuse to proceed any further with said work leaving the same only partially completed, and respondent finding that said petitioner would not complete said work according to said contract he said Respondent did take possession of said buildings in their incomplete condition with the view and intention of paying to said petitioner whatever he might reasonably be entitled to for the work and materials actually furnished and no more, which sum if any thing there may be respondent is ready & willing at any time & always has been ready to pay whenever the amount can be ascertained by settlement. Respondent further answering says that it will require at a reasonable estimate an expenditure of two hundred and twenty five dollars to complete the work agreed to be done in said contract by said petitioner according to said contract and probably much more.

Respondent further says, that he believes that he has sustained and therefore states that the damages sustained by respondent by reason of the non compliance of petitioner with his part of said contract to the amount of two hundred and fifty dollars over and above the amount which it will cost respondent to complete said work as aforesaid, which amount he prays he may set off against any sum which may be found owing from respondent to petitioner. Respondent states that what work was done by petitioner was not done in the manner required by said contract but was done in a careless imperfect unskilful manner by reason of which respondent has suffered

further damage to the amount of fifty dollars.

Having fully answered all of said petition which he is advised necessary to answer he therefore prays to be dismissed with his costs &c

Thornton Wolf
Sworn to and subscribed before me this 11th day of May 1857

Enoch P. Sloan Clerk

Lindsay & Lander for deft.

And afterwards to wit on the 28th day of May A D 1857 the said petitioner filed in the clerks office of said court his replication to defendants answer which is in the words and figures following to wit:

Replication

Edward Stone

vs
Thornton Wolf } Peoria County Circuit Court
May Term A D. 1857.

And the said petitioner says that he will aver & maintain his said bill to be true, certain and sufficient & the answer of the said defendant untrue, uncertain & insufficient, wherefore he prays as in and by his said bill he has prayed

by his solicitors, Davidson & Peinse

And thereupon on the 7th day of December A D 1857 the defendant filed in the clerks office of said Court an affidavit in said cause in the words and figures following to wit:

affidavit

State of Illinois

Peoria County

Edward Stone

} ss Peoria Circuit Court, Nov. Term 1857

vs
Thornton Wolf } Thornton Wolf the defendant in this suit being duly sworn on his oath says that the said Edward Stone is so unsettled in his pecuniary circumstances and as to his property as to endanger the officers of this Court with respect to their legal demands. That at the time of the commencement of this suit and until a short time since the said Edward Stone was in better circumstances so much so that affiant thought him able to pay all costs but that he has recently become as affiant believes insolvent for which reason affiant has never before made an application to rule him to give security for costs

Thornton Wolf
Sworn to before me this 7th day of December A D 1857, Enoch P. Sloan, Clerk

Proceedings in the Circuit Court at a term thereof began and held in the Court house in the City and County of Peoria in and for said County and State of Illinois on the third Monday of November in the year of our Lord one thousand eight hundred and fifty seven, it being the fifteenth day of said month. Present the Honorable Elihu K. Powell Judge of the 16th Judicial Circuit in the State of Illinois, Francis W. Smith Sheriff and Enoch P. Sloan clerk, to wit:

Friday December 11th A.D. 1857

Edward Stone

vs
Thornton Wolf } Petition for lien

This day comes the defendant by Lander his attorney and files his affidavit and thereupon moves the Court for a rule on the plaintiff to justify or file security for costs of this suit. And the Court being satisfied in the premises does order that the said Edward Stone justify or file security for costs herein by to morrow morning.

Saturday December 12th A.D. 1857

Edward Stone

vs
Thornton Wolf } Petition for lien

This day came the plaintiff by Davidson his attorney and on motion to the Court, leave is given him to file security for costs of this suit by Tuesday morning next.

And thereupon on the 15th day of December 1857, the plaintiff filed in the clerks office of said Court a Bond for costs in said cause which is in the words and figures following to wit:

Edward Stone

Bond
vs
Thornton Wolf } In the Circuit Court of Peoria County
Petition for mechanics lien

Know all men by these presents that I Edward Stone as principal & William N. Stone as surety are held and firmly bound unto Thornton Wolf abovenamed in the penal sum of two hundred & fifty dollars lawful money of the United States the payment whereof well & truly to be made we bind ourselves our heirs executors & administrators firmly by these presents; signed & sealed by us this 15th day of December A.D. 1857. The condition of the above obligation is such

that whereas said Edward Stone has commenced a suit against said Wolf for mechanics lien & now pending in the Circuit Court of the County of Peoria in the State of Illinois & said Edw. Stone has been ruled to file security for costs. Now if the above burden shall pay all costs in the said cause that may be adjudged against said Edward Stone then this obligation to be null & void otherwise to remain in full force & effect.

Edward Stone *Esq*
William ^{his} _{attest} N Stone *Esq*

And thereupon on the same day the defendant filed in the clerks office of said court his affidavit in the words and figures following viz:

Affidavit

State of Illinois }
Peoria County }
Edward Stone }
Peoria Circuit Court Nov. Term A.D. 1857

vs
Thornton Wolf } Thornton Wolf the defendant in this suit being duly sworn doth depose and say that William Stone security on the Bond filed in this case by plaintiff is also unsettled in his pecuniary circumstances, as to his property, as to endanger the officers of this Court with respect to their legal demands, and affiant is informed and believes, that said William Stone security on said Bond is wholly unable to pay any judgment that might be rendered against him, and that he is insolvent and does not own any property in his own name and that said bond is wholly insufficient and is no security for the costs in this case.
Thornton Wolf

Sworn to before me this 15th day of
December 1857 Enoch P. Sloan Clerk }

Proceedings in the Circuit Court at a term thereof begun and held in the Court house in the City and County of Peoria, in and for said County and State of Illinois on the third Monday of November in the year of our Lord one thousand eight hundred and fifty seven it being the sixteenth day of said month. Present the Honorable Elisha N. Powell Judge of the 16th Judicial Circuit in the State of Illinois, Francis W. Smith, Sheriff and Enoch P. Sloan Clerk to wit:

Tuesday December 15th A.D. 1858
Edward Stone

vs

Mechanics lien

Decree

Thornston Wolf.

This day this cause came on to be heard upon the petition, replication exhibits & proofs of the petitioner, the answer proofs and allegations of the defendant and a jury having been called came to wit: D. W. C. House, Ebenezer, Wesson James H. Ross, Stewart Neill, A. P. McKinney, Gideon B. Gutter, James Hazzard, Elbridge Clarkson, David Maxwell, A. O. Garrett, James F. Murden, and John M. Howell, twelve good and lawful men, who being duly chosen empanelled and sworn after hearing the petition, answer proofs evidence and allegations of the parties, the instructions given by the court and having retired to consider of their verdict come in open court and upon their oaths say, we the jury find the issue for the petitioner and assess his damages at four hundred and eleven dollars and twenty seven cents. And the court being fully advised in the premises do now here order adjudge and decree that the equity of the case is with the plaintiff and that the allegations in petitioners petition are true and that there is now due to the petitioner ^{E^s} for his work and labor and materials in and about the building the dwelling house of the defendant the said sum of (four hundred and eleven dollars and twenty seven cents) which sum is by the court here adjudged and decreed to be a valid lien on said lots five and six in block number eighty two in Boston Coris and Laveille's addition to the City of Peoria in the City and County of Peoria and State of Illinois. And it is further ordered adjudged and decreed by the court that the defendant within ten days from the signing of this decree pay the said petitioner the said sum of (four hundred and eleven dollars and twenty seven cents) and that in default of such payment that Henry B. Hopkins, Master in Chancery of this Court be and he is hereby appointed a Commissioner to sell said premises and out of proceeds of such sale to pay amount found to be due the petitioner, with interest thereon from the date of this decree and also the costs of such sale and of this proceeding. And it is further ^{and decreed} ordered by the court, that said Commissioner (having first given due notice of the time place terms and conditions of said sale, and a correct description of the premises to be sold by publication of notice, for twenty days previous to such sale in some public newspaper printed and published in the City and County of Peoria and State of Illinois and by posting up similar notices in four of the most public places in Peoria County) proceed to sell said premises to the highest and best bidder for cash at the front door of the Court house in the City and County of Peoria and State of Illinois, between the hours of

nine o'clock in the forenoon and four o'clock in the afternoon of the day of such sale, and that upon such sale that said commissioners execute to said purchaser or purchasers of said premises a certificate of such sale and that the defendant have the same right to redeem from such sale the same as though such sale had been made upon execution at law. And it is further ordered adjudged and decreed by the Court here that in case the defendant should fail to redeem said premises from such sale within the time limited by law that said commissioners shall then execute to the purchaser^{or purchasers} at such sale or his or their assigns a deed or deeds of such premises and that said deed or deeds shall vest said premises in fee simple in the grantee or grantees of such deed or deeds. And that the defendant pay the costs of this proceeding to be taxed.

The defendant by his attorney entered ~~x~~^{his} motion for a new trial.

And thereupon on the 18th day of December A D 1858 the defendant filed in the clerks office of said Court his motion for a new trial in words and figures following to wit:

Edward Stone
vs
Thornton Wolf

Mechanics lien

Defendant moves the Court for a new trial in this cause for the following reasons 1st The Court gave wrong instructions to the Jury asked by the petitioner. 2nd The verdict of the jury is contrary to the instructions of the Court. 3rd The verdict of the jury is against the evidence in the cause. 4th The verdict is against law. 5th There is no law nor evidence in the cause to support the finding of the jury. 6th And for other good and sufficient reasons.

Lindsay & Lander.

And afterwards to wit on the 19th day of said month A D 1847 the following proceedings were had in the said Court viz:

Saturday December 19th 1857
Edward Stone
vs
Thornton Wolf

Petition for lien

This day this cause again came on to be heard on the defendants motion for a new trial and the Court

motion for
new trial

being satisfied in the premises overruled said motion.

Saturday January 2nd A D 1858

Edward Stone

vs
Petition for lien
Thomson Wolf

This day came the defendant by Lander his attorney and prayed an appeal of this cause to the Supreme Court of this State which is allowed on his filing a bond in the penal sum of Eight Hundred dollars conditioned as the law directs with Philip Bender as surety. Said Bond to be filed with the clerk of this Court in twenty days.

And thereupon on the 4th day of January A D 1858 there was filed in the office of the clerk of the Circuit Court a bill of exceptions, which is in the words and figures following to wit:

Bill of
Exceptions

State of Illinois
Peoria County
Edward Stone

{ vs Peoria Circuit Court, Nov. Term 1857
Bill of Exceptions
Thomas Wolf

Be it Remembered that on the trial of this cause the Petitioner to sustain the issues on his part read in evidence the following agreement between the parties to wit:

"Article of agreement between Edward Stone of the one part and Thomson Wolf of the other part as follows.

Said Stone agrees to build for said Wolf the following buildings to wit: one dwelling or main building to be two stories high and sixteen feet wide by thirty two feet long to be sixteen feet eight inches between the upper and lower joist One main kitchen One story high the story to be the same height as the main building to be ten by twelve feet with six feet porch extending the whole length on the North East side. One summer kitchen One story high to be ten by twelve feet One smoke house to be eight feet square and well proportioned in height. The main building to be divided by a good substantial Partition running across the narrow way of the building in the center leaving two rooms, one for a parlor or front room & the other for a Dining Room each to be sixteen feet square

In the Main Building there is to be 5 windows in the Lower Story, two french windows in front and three Common windows on the North East side.

In the Second Story there is to be seven windows all to be made in appropriate style and places and to be in good proportion to the main building. In the Main Kitchen there is to be one window in the Summer Kitchen there is to be two windows all the windows in front only to be finished with Blinds & Springs. Doors There is to be one front door made in good proportion and finished with a good lock and Trimming the lock to be a Patent Lock. In the Main Kitchen there is to be three doors, one leading into the Dining Room, one out onto the Porch and one into the Summer Kitchen there is to be one door leading through from the front room to the Dining room. Under the whole of the dining Room there is to be a Cellar six feet & four inches high walled with brick.

Under the Summer Kitchen there is to be a Cistern that will hold fifty Barrels of water properly finished.

The foundation of all the buildings shall be made of brick and built substantially to be Eight inches thick and to run up two feet above the Surface of the ground.

There is to be a chimney running up between the Parlor & Dining Room, the same to have a fire place in the Dining Room & also a fire place in the second story above the Dining Room, in the Parlor there shall be a flue into the chimney and also a flue into the chimney in the second story over the Parlor. There is to be a good well finished Box Stair way leading from the Dining room up into the second story. There is to be good well finished mantle piece over & around the fire place in the dining room. The space between the chimney or fire place and the corner of the dining room on the opposite side from the door, shall be finished with a cupboard & shelving in good style so that the same will be even out with the chimney. The first story of all the building shall be filled ^{up} in the wall with brick from the foundation up to the window sills.

The Joist all are to be 2 inches thick & eight inches wide except the upper joist to be 2 by six inches.

There is to be a chimney for a flue between the two Kitchens. All of the materials to be furnished by the said Stone and to be of good sound timber and good quality.

Said Buildings are to be painted with two coats of white lead, both inside and out, all the work to be done and finished in good and workmanlike style.

Said Buildings to be erected on Lots 5 & 6 Block 86 in Morton Jones & Luvrells Addition to the Town (now City) of Peoria. Said Stone also agrees to build a good fence around said buildings as follows 176 feet of five board fence on the South side 114 feet of five board fence on the line of the Alley in said Block. Along on the line of Even's street 176 feet of five board fence, and 114 feet of five board fence on the line of Madison Street.

The work all to be done and the buildings finished with two coats of plastering (except the summer kitchen) which need not be plastered) by the first day of November 1856.

The fencing above mentioned on the South side will extend from the back building to the alley the building to be set on the line of the lot which will shorten the line of fence on that side.

There is to be a backhouse also built by said Stone on said ground. Said Wolf agrees to pay for said work as follows one Horse & one Cow & calf to be counted two hundred Dollars to be delivered when the foundation of said buildings is finished.

Four hundred Dollars when said buildings are all inclosed and four hundred Dollars when all the work is completed.

Said Stone further agrees to make us stair door for the stair way running up from the dining room all the doors are to be finished in good style with good and sufficient locks & latches.

Witness our Hands and seals this 17th day of Sept 1856.

Witness L & Sander.

Thornton Wolf Seal

Edwin Stone Seal

Said Wolf hereby agrees to extend the time for building the fence & Smoke House until the 15th day of November 1856.

Thornton Wolf

And it is understood and agreed that said Edwin Stone is to put on said house a good and suitable cornice on said house on all sides & ends of it, and also to put on good and sufficient

tin guttering on said House. So as to lead the water to Cistern.
And to make a door for passage into Celler out of Kitchen and
also steps into the Celler out of Kitchen. Said Cornice to be of the
same kind as is on the House which the said Wolf sold to Mrs
McGinnity and the same one he is at this time living in in
case the said Stone makes more walls in Brick work than
this Contract calls for. That is all over Two feet above the
surface from the ground. The said Wolf agrees to pay for the
same according to the price agreed upon in proportion.

Thornton Wolf
Edward Stone "

Petitioner next called William Mendenhall who testified that
he helped Stone build the houses in question between November
1856 & January 1857. That Stone furnished the materials
and done the work. That there were changes made in the
buildings from the original plan, that instead of one main
kitchen 10 by 12 feet and one summer kitchen 10 by 12 feet
with 6 feet porch across the main kitchen, one kitchen was
built 10 by 24 feet with 24 feet of 6 feet porch.
That there were 17 windows put in the buildings worth \$6.50
each. One of them put in the Celler. Nine doors were put
in worth \$5.00 each. Cistern was changed to hold 100
barrels instead 50 barrels. Extra work on kitchen worth
\$75.00. Extra work on porch worth \$40.00. Celler wall
of brick was built 7 feet high. Brick foundation for buildings
built. One chimney built in back kitchen with double flue.
Fence was built 6 feet high worth 10 cents per foot. Extra
work on cupboard by making double instead of single doors
worth \$4.00 extra work. Was 24 feet extra. ~~Put on~~ ^{Trimming}
put on worth \$3.60. 116 feet cornice extra put on main
house worth \$100.00. 24 feet cornice on kitchen extra work
\$15.00. 68 feet guttering on main house & 24 feet on
kitchen extra all worth \$20.16. Wolf wanted Stone to
make a better back house than Contract called for, he wanted
it worth \$25.00 & he would pay extra for it. One might
be built for \$5.00 or \$6.00. That would do.
Witness stated generally that Stone furnished the material

done the work and built the House under the Contract and that it was a tolerable good Job. That Stone built a main dwelling house — feet long two stories high 17 feet from sill to plate & feet wide also a Smoke House & feet of fence around said lots on which said buildings were built. That at the time when Stone was building the extra part of the Kitchen Wolf & Stone agreed to extend the time of completing the whole job beyond the time mentioned in the Contract on account of the extra work Wolf was having done. That he worked for Stone upon the job until Stone moved into the said dwelling House sometime in 1856 — That when Wolf moved into said House there was some plastering left to be done in order to finish the entire Job. That after Wolf moved into said House it would have been inconvenient to have finished the Job. — That at the time the work on the job was being done Wolf was present & saw the same was done & made no objections to any of it — That the alterations were made at Wolf's request & That he promised to pay for the extra work.

On Cross Examination Said McCendenhall stated that when Stone left the job three large rooms, the front room below and two upper rooms were not plastered. He thinks 2 coats of paint were put on the outside of the buildings that he did not know as to the inside. He further stated that he did not know what was and what was not extra work at the time when the work was done, but the things mentioned by him as Extra were Extra and that he can tell what the extra work was from hearing it read in Court. That the materials furnished were good common materials, the job was a good plain job, as far as he (Witness) worked it was well done. Some of the work might have been done better he knows the Cupboard was a good job.

That the Cupboard did not come even out with the Chimney by 4 inches. Stone had 2 young men working for him on the job. They were not good workmen. Some of the work they done was done over. That he Witness was working for Stone. All the work that was necessary to do over was done over & made good. James Hazard to whom the parties agreed to submit the question of the quantity & value of the extra work estimated

at the wall at & the value at \$36.45 not including the wall under the porch. E. W. Brown Sworn testified that he & his brother Lathed some on the buildings, they Lathed for Stone 3 rooms Stone furnished the materials (furnished about 20 bushels of Lime and about enough sand to finish the job) The cost to finish plastering about 35 \$ Extra work on Cistern worth about \$25 by making it hold 100 instead of 50 barrels. A Cistern holding 50 barrels is worth \$25 & if larger same price increased in proportion to size - That he thought this Cistern held about 100 barrels. That he had followed plastering here in Cincinnati & New Orleans about 15 years. That this business made him acquainted with Carpenter work & that he considered himself a judge of the same - That he considered the work good common work & good materials - That his brother had done what plastering there was done that is all but the front room below & the two rooms above - That he witness had contracted with Stone to finish the plastering for \$35.00 - That Stone had materials furnished & on the premises at the time Wolf moved into the same, enough to have finished the job. That the inside was well finished & all to be done to complete the job was the remaining plastering -

Geo Breden Sworn testified that he measured the brick foundation above the ground that it was 2 feet 10 inches in the highest & 2 feet 8 1/2 inches above the ground in the lowest place. That the job was a tolerable good job. The (witness) did not look at the inside of the House but only took an outside view. That it was a short time ago when he done the measuring that he wanted to take a look inside but Mr Wolf would not let him come in Wolf was not there. That he went in company with 2 other men & Stone at the request of Stone to look at the work, that Stone asked to go in stating his object was to examine the work Mr Wolf said they should not come in - That the witness was a Carpenter & had worked at the business twelve years James Murden Sworn Stated that he cemented the Cistern for Wolf that it would hold from 100 to 120 barrels of water to build one holding 50 barrels would cost \$25 and one holding 100 to 120 barrels would cost in the same proportion.

That is from \$50 to \$55.00 - That he replastered after Stone had had it once plastered - That the plastering had been frozen off in the extreme cold of last winter - That he knew of a number of Cisterns the plastering had been frozen off of last winter - That he had built many Cisterns - was a plasterer by trade & had followed the business in this City for 15 years.

[Cross Examined] That he did not consider the frame on the top of the Cistern necessary to complete the Cistern - That he never built the frame unless paid extra for the same or specially bargained for that he had finished many Cisterns without the frame - That if the frame had been put on in the fall it would not have prevented the plastering from freezing off in the cold of last winter

Here Petitioner rested his case. The Defendant to sustain the issues on his part read in evidence without objection the answer of defendant and also the following Receipts for money paid Petitioner by Wolf on said Contract one for \$450.00 date 14 Nov/56 one for \$50.00 date 17 Nov/56 one for \$75.00 date Nov 22/56 one for \$25.00 date Nov 15/56 as follows

(1)
\$450.00 Received Peoria Nov 14th 1856 of Thornton Wolf the sum of Two Hundred and fifty dollars in cash and one horse and cow valued at Two Hundred Dollars as pay on House Built by me for Thornton Wolf
witness
Jno S Lindsay Edward Stone

(2)
Recd Peoria Nov 22th 1856 of T Wolf Seventy five Dollars Payment on house on Lot 5 & 6 in Block 86 Mount Pleasant addition
Edward Stone

(3)
Recd Peoria Nov 17th 1856 of Thornton Wolf fifty Dollars in Cash on a building
Edward Stone

(4)
Recd of Thornton Wolf Twenty five Dollars on House Contract
Peoria Nov 15th 1856.
Edward Stone

Deft next called Jabez Smith who testified that he was a Lumber Merchant in Florida that some time in the fall or winter of '56. Stone got Lumber of him for Wolf's House and that Wolf paid for it \$14 or 15.

John Waugh being sworn for Deft testified that he looked at the house in question at the request of Wolf in the Spring or Summer of '57 with a view to finish the Job.

That Witness is a house Carpenter by Trade has worked at it some 30 Years that he estimated the probable cost it would require to finish the work according to the Contract item by item which was according to his judgment about \$215.57

That the work done by Stone was not done in a good & workmanlike style but was rather a poor & indifferent job.

That the siding was not good. Stuff was not sufficiently lapped and was not nailed properly. That the floors were open. Some of the studding did not come down to the sill and some were spliced to make them long enough. That he could see through the cracks & openings in the siding from the inside of the House.

That the quality of Lumber used by Stone was not very good. The roof was leaky, it also leaked where the Kitchen joined to main building owing to bad work.

The partition between the parter & Dining Rooms was not straight by about three inches caused by the partition walls on each side of the chimney not running on a straight line with each other. The railing around the stair way was roughly done and was loose.

The base boards were too thin & were crooked. The foundation for the chimney was not sufficient. Stone tried to build it on an 8 inch wall but Wolf had to build a brick foundation for it afterwards.

The cornice was a bad job holes were left in the corners where the rain & snow would beat in. The porch was not finished the floor was not level, was lower next to the wall than at the out edge. Some of the window casings were spliced to make them long enough. All the work was roughly done. That Wolf herein his judgment sustained damages on account of defects in the materials & work.

& job being left unfinished to the amount of three hundred
Dollars On Cross Examination

Waugh stated that two other persons were with him when he examined the House Wolf the Deft and one Mead They first read over the Contract and then estimated the Cost it would take to finish the buildings item by item. That he included in the estimate the Cornice & mentioned in the Contract That they estimated from the Contract as he understood it. That they went there at Wolf's request Stone was not there

In his opinion it would not be a fair shake for Wolf to call in persons to examine the work and not give Stone the same privilege or the privilege of being presents - That he never saw the roof leak nor any other part. That he did not see Wolf build a new foundation for the Chimney & only knew of the same from what Wolf said That he saw only one Studding that did not come down to the sill - That by \$300.00 damage he meant That if instead of the unfinished job Stone made for Wolf. Wolf had had a complete job made of good materials & of good Workmanship throughout, it would have been worth \$300.00 more to Wolf for a dwelling house - That at the time he examined the work for Wolf, Wolf admitted that the Kitchen at his request had been made 24 feet instead of 12 feet in length & that 12 feet of the Kitchen 12 feet of the porch were extra work

John Buckley sworn for Deft testified That he done work on the House in question for Wolf in Dec/56. to the amount of \$10.00 which Wolf paid

John H. Curley sworn testified That he was by trade a plasterer that he done plastering on the House in question for Wolf in the fall or Winter of /56 to the amount of thirty four dollars which Wolf paid, while he was there Wolf furnished brick & put up 18 feet of foundation wall for porch 12 feet on side & 6 feet on the end worth \$6.00 - Wolf furnished for Witness 3 barrels of Lime & 1 bushel of Cement worth \$8.75.

Wolf paid Joseph Camp while he was there for work on the House done while he was there \$5.00 which he saw paid

That Wolf furnished brick used while he was there about 1420 worth \$9.23. Stone left 3 or 4 hundred brick when he left the job which Wolf used That Wolf took out props which Stone had commenced building Chimney on & built up

a brick foundation for the chimney to stand on, which was necessary to be done to support the chimney. That while there Wolf bought locks & latches &c for windows worth \$4.90. Wolf paid Peter Botz for brick used there \$10.40. Wolf worked some 5 days himself on the House while Witness was there worth \$1.50 per day.

Cross Examined

Stone built brick pillars under the porch for a foundation & one such pillar which turned the corner under the porch - either a wall or pillars are used as a foundation for a porch but Witness thought a wall the best.

Mr. Peacock sworn (testified that Wolf bought of him in the winter of /56, to be used about the house in question 1000 soft brick & 600 hundred hard brick all worth \$7.60)

Pat Kain sworn testified that he hauled water for Wolf to mix Mortar to be used about the House in question to the amount of \$2.00 which Wolf paid.

Anderson Grimes sworn testified that he had looked at the House in question several times & examined the same. The Sidding was not good stuff (not sufficiently lapped and not sufficiently nailed). The floors were open, Roof was leaky, holes were left in the Corners of the Cornice where the rain & Snow would beat in and wet the inside of House. That Birds built nests in the holes in the Cornice.

That the defendant had sustained damages on account of defective work & Materials.

Cross Examined.

Sever. had any difficulty with Complainant - That about one year ago said Complainant sued him, Witness to recover a debt. That after being sued he paid Complainant.

Bradley being sworn testified that he was a house Carpenter had worked at the business about 15 years that he had examined the work in question in the fall of /57. That he called it a poor job of work. The Sidding was not sufficiently nailed nor lapped, that Witness noticed 4 Studding that were spliced & one that did not come down to the sill. That in the opinion of Witness Wolf has sustained damages on account of the defective manner of the work to the amount of

three hundred dollars. That the difference between the job left as it was and a job made of good materials and done in a good and workman like manner would be \$300 hundred dollars

Cross examined

Have lived in the City of Peoria about two months.

G. P. Curtis being sworn on his oath stated that he was a house Carpenter, had worked at the business a long time. Worked on the House in question for Stone. That the materials used by Stone were not good, that Stone could not make a good job out of the materials used that the work was a poor job. The workmen that Stone had was rather a poor set Mendenhall was the best (& he was not a good workman) That Stone himself is no workman the Siding on the House was badly put on, that he could see through it from the inside. The House roof leaks it leaks also where the Kitchen joins to the main building. That Stone is a Cooper & Mendenhall is a Plow maker.

Cross examined

Have had a law suit with Complainant at this term of this Court I worked on said building for Stone - Consider myself a fair workman. John Lynch being sworn testified that he was a

house Carpenter by trade, had worked at the business 20 years

That he had examined the House in question in the fall of '57 it was what he called a poor job. The floors were badly laid, joints were open, casings around windows & doors badly put on, one door had fell off in consequence of the door casing to which it was attached being badly put on. The floor on inside of dining room is badly fixed, instead of joining the ends of floor boards between Parlor & dining room under the partition they extend through from the Parlor a foot or so inside of the dining room & there join to the flooring in the dining room leaving open & rough places. The railing around Stair way is loose & roughly done. Witness put on Box and Cap on the Cistern for Wolf for which he paid \$5.00 that the box & cap were necessary parts of the Cistern in his judgment to make it finished. He considered Wolf had been damaged by the Job being unfinished & not being well done & of good materials \$200 to \$300.00 Peter Kinney being sworn testified that he was a house Carpenter, had worked at the business some years, had examined the work in question, that it was a poor job, that in his opinion Wolf was damaged on

account of bad manner of work & bad materials & unfinished work not including cost of finishing from two to two hundred & fifty dollars John H. Swain sworn. Stated that he had looked at the House in question with a view to finish the work in the fall of 1874.

That he was a Carpenter & joiner by trade had worked at the business about 30 years. That he first examined the outside and found the Siding was not good stuff and was not sufficiently lapped nor nailed properly. That the defects in the work were so numerous he did not know where to begin to point them out - The house had sagged over about 8 inches at the top. The cornice had been put on with a sag in the middle so that water & snow beating in at the corners of the cornice would run in to the center of cornice and stand. That water was dripping from the cornice when he saw it. Stakes were left in the corners of the cornice big enough to run his fist in. That witness next examined the inside found the partition wall between Parlor and dining rooms cracked about 3 inches on account of the partition wall on each side of chimney not running in a straight line. The base boards were made of inch stuff which was too thin, when the Lath & Plastering is put on the plastering will project over the base boards. The flooring was not good stuff & was laid down badly, was open. Window Casings on inside of house were badly put on some were patched to make them long enough. The railing around Stairs was roughly done & was loose. The upper floors were so open that they could not be washed. One door casing was off & the door had come off with it because it was never properly put on. Doors were not being high enough to swing clear of the Carpets if any were used. That a good job could not be made of it without tearing it all apart. That he had rather have the materials without the work than have them with it. That Wolf had sustained damages on account of the bad manner of work not finishing the job & bad materials to from \$300 to \$400.00 on account of work and materials and leaving the job unfinished. The fence was a poor job, Posts were too small & even loose, the boards were too short, some of them barely ketched on the

posts so that the nails did not all drive into the Posts
The Roof of the House leaked, not well put on, it leaked
where the Kitchen joined to main building. The Porch was not
sealed over head, nor plastered. The Porch floor was lowest
next to the wall so that water falling on it would not run off
Cross Examined

Have lived in Peoria about six months - have not followed
any thing in particular since I have lived in Peoria
Lawrence Vanbuskirk being sworn testified that he had worked
at the Carpenters trade about 27 years, had examined the
work in question. The work was badly done, that he had
never seen a worse Job. That he had heard all the witnesses
said about the defects in the work & agreed with them.
That he (Witness), could go on & point out the various objections
if desired, that they were very numerous. That the chimney
between the Parlor and dining rooms was commenced on an 8
inch wall by Stone & then Swelled out to form the fire place
so that most of the weight when the chimney was partly built
came on one side & the chimney began to lean over. Wolf then
took out some props & block Stone had put on & built under
a brick foundation. That he had rather have the materials
without the work than with it. That in his opinion Wolf
had sustained damages on account of bad workmanship
& bad materials to the amount of \$300.00 - that is the difference
between this left in the State it was by Stone & the same finished
up with good materials & of good workmanship is \$300.00 that
it was worth \$1500.00 to have done the job of good materials
& in a good & workman like manner from the beginning. That
the damage in his opinion was about the value of the Carpenters
work on the job, for he had about as soon have the materials
without as with the work. Richard Waughp being sworn
stated that he had worked at painting for 15 or 16 years
that he had examined the work in question after Stone had
quit, that the main house & Kitchen had only been painted with
one coat, the other buildings had not been painted any & some
parts of the Kitchen had not been painted any.
Cross examined

Stated that it was about one year after the work was done
when he examined the same. Here the Defendant rested his

Case. Plaintiff called John Barrett who testified that he had followed Carpen-tering for 15 years - that he had worked on the job in Controversy & that the Materials were good Materials that some of the work might have been done better - that in general the work was a good common job - that there were two siding that were not sufficiently lapped - that \$100.00 would have finished the job, & made all the work good - that he would have been willing to have Contracted to have finished the work & make all the work good for \$100.00 - that Wolf had taken him through the House & shown it to him about 3 weeks ago. On Cross Examination Witness stated that he thought Wolf had not sustained over \$100.00 on account of the manner of the work done by Stone - James S. Mendenhall Sworn testified that he was a painter & had followed the business for 12 years had painted the outside of the dwelling & Kitchen with two coats & also the inside of the Kitchen - that there was another man who painted the balance of the inside & that it was all well done. Here the parties closed their evidence. The Court by agreement of parties gave the following Instructions

"Instructions given by the Court by Agreement of the parties, The Jury will examine the Contract between the parties and are to be governed by the evidence in the Case How much work was done by the plaintiff on the House under the Contract and will allow the plaintiff for what work he done according to the Contract price

If the Jury believe from the evidence that there was more work done by the plaintiff for the defendant on the building in Controversy than is contained in the Contract by a change in the plan of the building by the agreement of the parties they will find such sum as may be due to the plaintiff for such extra work according to the value of the work in the Contract price -

If the Jury believe from the evidence that the building as contracted to be built was not completed by the plaintiff and the parties agreed that the defendant should finish the building then the Jury will allow the defendant

for such sum as they believe from the evidence it would take to finish the building as it was to be done by the contract

If the Jury shall believe from the evidence that the work on the building was not done in a workmanlike style owing to defects in the materials or workmanship the Jury will allow to the defendant such sum as they believe from the evidence it would take to make the building such as the contract requires to be built—

The answer of the defendant so far as the same is responsive to the Petition that is so far as it denies the allegations of the Petition is evidence for the defendant proper for the consideration of the Jury and where the answer denies a material allegation in the Petition then the burden of proof rests on the plaintiff to disprove the truth of the answer by the testimony of two witnesses or by the testimony of one witness and other strong corroborating circumstances—

The answer of the defendant so far as it admits the truth of any allegations in the Petition is evidence for the plaintiff and needs no proof by him so far as the admissions in the answer goes "

The Jury then retired & returned the following verdict against the Defendant—

We the Jury in said case find for the Plaintiff and assess damages at Four hundred and Eleven dollars and twenty seven cents (\$411²⁷/₁₀₀)—

Defendant then made a motion for a new trial for the following reasons—

- 1st The Court give wrong instructions to the Jury asked for by Petitioner
- 2nd The verdict of the Jury is contrary to the instructions of the Court
- 3^d The verdict of the Jury is against the Evidence in the Cause
- 4 The verdict is against Law
- 5 There is no law nor evidence in the Cause to support the finding of the Jury
- 6 And for other good & sufficient reasons

The Court overruled said Motion and rendered Judgment on the said verdict against said defendant to which ruling of the Court the defendant then & there excepted and for as much as the foregoing matters do not appear of record the deft prays the Court to sign & seal this bill of exceptions which is accordingly done
E. N. Howell Seal

And afterwards to wit on the 18th day of January A.D. 1858 the Defendant filed in the Clerk's office of said Court an official Bond in the said cause which is in words and figures following to wit:

Appeal
Bond

Know all men by these presents that We Thornton Wolf as principal and Philip Bender as Security are held and firmly bound unto Edward Stone in the penal sum of Eight Hundred dollars lawful Money for the payment of which well and truly to be made we bind ourselves our heirs executors and administrators jointly severally and firmly by these presents. The Condition of the above obligation is such whereas the said Edward Stone did at the November Term of the Circuit Court of Peoria Co Illinois 1857, recover a Judgment against said Thornton Wolf for the sum of Four Hundred and Eleven Dollars and twenty seven Cents from which Judgment said Wolf has prayed and appeal to the Supreme Court in the State of Illinois to the Third grand Division thereof. Now if the said Wolf shall prosecute his said appeal duly and with effect and shall pay to said Stone whatever Judgment, Costs, interest and damages that may be rendered in case said Judgment shall be affirmed then the above obligation to be void otherwise to remain in full force and effect. Witness our hands and seals this 12th day of January 1858

Thornton Wolf Seal
P. Bender Seal

State of Illinois }
County of Peoria } ss. I, George P. Sloan, Clerk of the
Circuit Court of the County of Peoria in the State of Illinois
do hereby certify that the foregoing is a full and complete

transcript of papers filed and of the proceedings of our said Court
in the cause wherein Edward Stone is plaintiff and Thornton
Wolf is defendant as the same appears on file and of Record in
my office

Given under my hand and sealed
said Court at office in Peoria
this 19th day of March 1858

Thornton Wolf Applicant

vs
Edward Stone Appellee

~~Thornton Wolf~~ State of Illinois Supreme
Court 3rd Space Revision
April Term 1858.

Appeal from Peoria

And now comes the said Thornton Wolf
by his attorneys and says that in the record
and proceedings of said Circuit Court of
Peoria County, there is manifest error and
assigns for error

1st The Court gave wrong instructions asked for by
Petitioner

2nd The verdict of the jury is contrary to the instructions
of the Court

3rd The verdict of the jury is against the evidence
in the Cause

4th The verdict is against Law

5th There is no Law nor Evidence in the Cause to
support the finding of the jury

6th And for other good and sufficient reasons

7th The said Circuit Court erred in not granting
defendant ^{below} a new trial

8th The said Circuit Court erred in ~~not~~
~~granting defendant a new trial~~
overruling ~~defendant's~~ ^{Said Plaintiff's} motion for a new
trial for the reasons stated in said motion

Wherefore for the errors aforesaid the said
Sherrill Wolf prays that the said judgment
and decree of said Circuit Court may be
reversed, set aside and for nothing had,
held and intimated.

Sherrill & Sherrill
for Appellant

And the Appellee comes and says that
in the record and proceedings aforesaid
there is no error.

Sherrill Atty
for Appellee

Supreme Court--State of Illinois.

THORTON WOLF, }
vs. } Defendant's Brief.
 EDWARD STONE. }

1. There is no question of law raised on the record.

There was no evidence objected to, and the instructions were given by agreement, and the jury were to examine the contract.

2. The only question raised by the answer, is as to the amount due to Wolf. Wolf was willing to pay what was fairly due.

The original contract price was

\$1000.00

The extra work was

Mendenhall	5 windows, \$6 each,	-	-	-	-	-	-	\$30 00
	4 doors, 5 each,	-	-	-	-	-	-	20 00
	On kitchen,	-	-	-	-	-	-	75 00
	Porch,	-	-	-	-	-	-	40 00
Hazard	Cellar wall,	-	-	-	-	-	-	36 45
	Cupboard,	-	-	-	-	-	-	4 00
	Extra turning,	-	-	-	-	-	-	3 60
	Cornice,	-	-	-	-	-	-	100 00
	" on kitchen,	-	-	-	-	-	-	15 00
	Guttering,	-	-	-	-	-	-	20 16
	Cistern,	-	-	-	-	-	-	25 00
	Back house	-	-	-	-	-	-	369 21

\$1269 21

1269.21

The evidence as to the character of the work was conflicting.

Mendenhall 1. Wolf was present while work was being done, and found no fault.

1. Wm. Mendenhall states job was tolerably well done.

2. E. W. Brown — Good common work.

3. George Breden — Job was tolerable good one.

4. John Barrett — Worked on job. Materials good; good common job.

5. J. S. Mendenhall — Painted house, two coats. All well done.

Wolf proved by

1. John Waugh — It was rather a poor, indifferent job.

2. Andrew Grimes — Siding not good stuff. Floors open; wet inside: birds built nests in cornice.

3. Bradley — Poor job.

4. Curtiss — Was a poor job.

5. John Lynch — Poor job
6. Peter Kinney — Poor job.
7. John H. Sawin — Job bad one.
6. Vanbuskirk — Never seen a worse job.

Waugh put damages	- - - - -	\$300
Bradley " "	- 300 - - - - -	300
Lynch " "	2 to 300, say - - - - -	250
Kinney " "	2 to 250, say - - - - -	225
Sawin " "	3 to 400, say - - - - -	350
	<u>1250</u>	
	300	
	<u>5)1425 00</u>	
	285 00	
The amount Wolf agreed to pay,	- - - - -	1000 00
Add extra work,	- - - - -	369 21
		<u>\$1369 21</u>
Deduct payments claimed,	- - - - -	\$699 05
Average damages of Wolf's witnesses,	- - - - -	285 00
		<u>984 05</u>
Leaves	- - - - -	<u>\$385 16</u>

The jury found \$411.27.

Five witnesses testify the job was a good common one.

Plf. should have received but \$285.16
 See Grant's Statement
 3 films 261-

1269.21
~~984.05~~
 285.16

411.27
 285.16
126.11

Woy
Stem
Aloft
Bump

~~Stone~~ 158

M
~~Wolf~~

Rever
Sheldon Wolf appointed

Edward Stone appointed

Filed April 20, 1858
in Island
Blk.

2641 \$

Wolf as Stone ~~Successor for~~
~~Appellant~~

The lien in this case attaches by virtue of the Contract & the work done & Materials furnished under it,

Petitioner must state his Contract in his petition with reasonable certainty and prove the same as laid in order to recover; he can not abandon his Contract and recover upon a quantum meruit H Gilman. 566

The Petition in this case states that there was an additional Contract made after making the original, relative to the cornice & guttering on the main house.

The answer of Wolf under oath positively denies that there was ever any additional Contract but states that the supposed additional Contract was part & parcel of the original Contract and made as such; this part of the answer is fully responsive to the Petition and requires proof by the Petitioner equal to the testimony of

two witnesses or one witness + other strong corroborating circumstances to corroborate it.

What is the proof of this additional Contract? Nothing appears from ~~the~~ inspection of the agreement ^{itself} to show ^{that} it was any other than part of the original written Contract.

There is not one word of testimony showing it was an additional agreement no witness is called to prove that there was ever any additional Contract relative to Cornice and Gutters on Main House.

Mendenhall the only witness who says a word on the subject says that there was 116 feet Cornice on the Main House which he calls extra work worth \$100.00 + 68 feet of Gutters on Main house + 24 feet on Kitchen all worth \$20.16 which would make by his estimate about \$14.00 for the Gutters on Main House.

This witness has enumerated some things as extra work which were in fact extra for they were not required by the written agreement - but he has by mistake mentioned also the Cornice

and Gutting on Main house as
extra when in fact it was required &
specified as part of the written agree-
-ment

By this the jury were misled
and gave the Petitioner \$114 for work
which was according to the Contract &
evidence to be paid for ^{out of} ~~in~~ the Contract
price of \$100.00

But to make the error more certain
the same witness states on Cross exam-
-ination that he ~~did~~ ^{did} not know what was
& what was not extra ~~was~~ work

Another witness for Wolf, John
Traugh who made a careful examination
of the work with a view to finish the
job after Stone left it, according to
the Contract, understood that the
Cornice was a part of the work to be
done under the written agreement
for he says he examined the Contract
& then made the estimate under it
in which he included the cornice
mentioned in Contract ~~to~~

~~There~~ Is there any proof & warrant
the jury in making Wolf pay for the
Cornice & Gutting on Main house?

to do so is allowing Petitioner to
abandon his Contract & recover upon
a quantum Meruit

There is not a word of evidence
in the record that wolf ever agreed
to pay extra for the cornice & guttering,
that, the Contract itself fixes, & the
answer of wolf stands wholly uncon-
-troverted

A decree against a sworn answer
will not be sustained without proper
evidence to controvert it 18 Ills R 41

The Court, and not the jury
must determine the extent of liability
under the written Contract & fix the
rights of the parties.

The jury in this case even with-
-out evidence on the subject have attempted
to fix the liability of the parties to the
written Contract & allowed stone for
the full value of the cornice & guttering
on main house, when by the Contract
he was not to have one cent extra pay
for it 18 Ills 126. is an authority
in point, that the Court must fix the
liability under Contract

The account stands as follows

Pine Stone	\$ 60,000
Pine cut by wolf in the fall & winter of '56. & before Wagon	
Made his Estimate in the Spring or Summer of '57	
To Smith for Lumber	\$ 14,50
Buckley work	10,00
Curby Plastering	34,00
Porch walls & brick for same	6,00
Lime & Cement	8,75-
Leamup	5,00
For Brick	9,23
Locks & Latches	4,90
Boots for Brick	10,40
Peacock for brick	7,60
himself work 5 days @ 1,50	7,50
Pat Raine for water	2,00
for Western Cap & Box	5,00

\$ 124,88 = \$ 124,88

After all this & in the next Spring or Summer Wagon Estimate the Cost to finish the building item by item at \$ 215,57

Not including Wagon br. } \$ 940,45
in favor of wolf }

Stone Cor.

To Contract price \$ 1000.00

2 Extra Doors @ \$6 each 12.00

3 Extra Windows @ \$5 each 15.00

Extra Wall over 2 feet 36.45-

Extra work on Kitchen 25.00

Extra Work on Porch 10.00

Cornice on Kitchen 13.00

Guttering on Kitchen 7.00

being 1/2 the sum named for cornice & guttering

Extra Lining 3.60

154.05-

Extra work on Kitchen 75.00

\$ 229.05 =

229.05-

Making Stone's Cor.

\$ 1229.05-

from which take W. Alf's Cor.

940.45-

Balance due allowing no damage

\$ 288.60

Deduct damages

\$ 30.00

\$ 258.60

In this Estimate is included three items for extra work on Kitchen 10 by 12 feet. Cornice & guttering on Kitchen at \$22- & then a general charge for extra work on kitchen put at \$75- it is evident that the \$22 is included in the general charge ^{of \$75-} which makes a further mistake of \$22- necessitating the balance to near half the verdict

Where there is no evidence or where
the evidence does not support the Verdict
the same should be set aside & new
trial granted Lowry vs Corbett / Gilman
70.

Verdict Manifestly against the
evidence should be set aside 2 Gilman
595. 17 Ells 699.

Where it is apparent that jury have
mistaken the evidence or misapplied the
law, new trial will be granted
11 Ells 142. 3 Graham & Waterman on
New Trial 1330 *

In this Case the jury have
manifestly mistaken the evidence as
applicable to the issue, & allowed the
Appellee the price of cornice & guttering
on main house as extra work when it
was included ~~in~~ as work to be done
under the written Contract

Verdict is against Instructions
of the Court for there is not in all
the instructions a word leaving the jury
to believe there was more than one
written Contract the language of the

* If there is no evidence, the jury can only find against the plaintiff.
* the court instructed the jury for the party against whom
there is no proof 380 W on 17 & 18 1897

Instructions is "the written Contract"
but Confers jury to one contract

It is clear that the merits of the
Case have not been tried

2 Decr 1852.

Timothy H. Larimer for
Appellant

Wm. C. Stone

Prinf

Supreme Court---State of Illinois.

THORTON WOLF, }
vs. } Defendant's Brief.
 EDWARD STONE. }

1. There is no question of law raised on the record.

There was no evidence objected to, and the instructions were given by agreement, and the jury were to examine the contract.

2. The only question raised by the answer, is as to the amount due to Wolf. Wolf was willing to pay what was fairly due.

The original contract price was

\$1000 00

The extra work was

Mendenhall	5 windows, \$6 each,								\$30 00
	4 doors, 5 each,								20 00
	On kitchen,								75 00
	Porch,								40 00
Hazard	Cellar wall,								36 45
	Cupboard,								4 00
	Extra turning,								3 60
	Cornice,								100 00
	" on kitchen,								15 00
	Guttering,								20 16
	Cistern,								25 00
	Back house								369 21
									\$1369 21

The evidence as to the character of the work was conflicting.

- Mendenhall
1. Wolf was present while work was being done, and found no fault.
 1. Wm. Mendenhall states job was tolerably well done.
 2. E. W. Brown — Good common work.
 3. George Breden — Job was tolerable good one.
 4. John Barrett — Worked on job. Materials good; good common job.
 5. J. S. Mendenhall — Painted house, two coats. All well done.

Wolf proved by

1. John Waugh — It was rather a poor, indifferent job.
2. Andrew Grimes — Siding not good stuff. Floors open; wet inside: birds built nests in cornice.
3. Bradley — Poor job.
4. Curtiss — Was a poor job.

5. John Lynch—Poor job
6. Peter Kinney--Poor job.
7. John H. Sawin--Job bad one.
8. Vanbuskirk—Never seen a worse job.

Waugh put damages	-	-	-	-	-	-	\$300
Bradley " "	-	-	-	-	-	-	300
Lynch " " 2 to 300, say	-	-	-	-	-	-	250
Kinney " " 2 to 250, say	-	-	-	-	-	-	225
Sawin " " 3 to 400, say	-	-	-	-	-	-	350
							<u>5)1425 00</u>

Average, \$285 00

The amount Wolf agreed to pay,	-	-	-	-	-	-	1000 00
Add extra work,	-	-	-	-	-	-	369 21
							<u>\$1369 21</u>
Deduct payments claimed,	-	-	-	-	-	-	\$699 05
Average damages of Wolf's witnesses,	-	-	-	-	-	-	285 00
							<u>984 05</u>
							<u>Leaves</u>
							\$385 16

The jury found \$411.27.

Five witnesses testify the job was a good common one.

156-55
Woly
Stem
Sept Bury

